

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**Leona Hart**  
2309 South Ave.  
Delavan, WI 53115

Case No: \_\_\_\_\_

**Plaintiff,**

-vs-

Case Code: 30301

**Capital One**  
c/o Corporation Service Company  
11 South 12th Street  
PO Box 1463  
Richmond, VA 23218-0000

**Defendant.**

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**COMPLAINT**

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NOW COMES, the Plaintiff, LEONA HART, by and through her attorney, the LAW OFFICES OF JOSHUA B. KONS, LLC, and for her complaint against the Defendant, CAPITAL ONE, the Plaintiff states as follows:

**I. PRELIMINARY STATEMENT**

1. This is an action for actual and statutory damages for violations of the Fair Debt Collection Practices Act (hereinafter "FDCPA"), *15 U.S.C. §1692*, et seq.

**II. JURISDICTION & VENUE**

2. Plaintiff brings this action under *15 U.S.C. §1692k*, asserting original jurisdiction of this court for civil actions arising under the laws of the United States.

3. Plaintiff also brings certain claims as denoted herein pursuant to *28 U. S. C. §1367*, asserting supplemental jurisdiction over those claims herein which does not arise under the laws of the United States but which are part of the same case and controversy alleged herein.

4. Venue is proper in this district pursuant to *28 U.S.C. §1391(b)*.

5. Defendant conducts business in the state of Wisconsin, and therefore, personal jurisdiction is established.

### **III. PARTIES**

6. LEONA HART, (hereinafter, "Plaintiff") is an individual who was at all relevant times residing in the City of Delevan, County of Walworth, State of Wisconsin. Delevan is situated in the Eastern District of Wisconsin.

7. Plaintiff is a consumer as that term is defined by *15 U.S.C. §1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. §1692a(5)*.

8. CAPITAL ONE, (hereinafter, "Defendant") is a business entity that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection in the State of Wisconsin. Defendant is a national company with its principal place of business in Virginia.

9. At all relevant times, Defendant is a debt collector as that term is defined by *15 U.S.C. §1692a(6)*, and sought to collect a consumer debt from Plaintiff.

10. At all relevant times, Defendant acted through its duly authorized agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11. During the course of its efforts to collect the debts allegedly owed by Plaintiff, Defendant has initiated contact with Plaintiff via various means of telecommunication, including without limitation the telephone.



#### **IV. FACTUAL ALLEGATIONS**

12. Plaintiff allegedly owed Defendant a debt, the funds from which were used for Plaintiff's personal use and/or for household expenditure.

13. The debt that Plaintiff was allegedly obligated to pay was a debt allegedly owed by Plaintiff to Defendant.

14. On July 17, 2009, Plaintiff had an attorney send a notice of representation to the Defendant with respect to such debt.

15. Upon receipt of this July 17, 2009 letter, Defendant had actual knowledge that the Plaintiff was represented by an attorney and could readily ascertain such attorney's name and address.

16. At no time did Plaintiff's attorney consent to direct communication between the Defendant and Plaintiff regarding the collection of any debt.

17. This letter contained a demand that the Defendant immediately cease any and all communication with Plaintiff.

18. Following the receipt of the notice of representation that was sent July 17, 2009, Defendant continued to constantly and continuously place collection calls to Plaintiff seeking and demanding payment for an alleged debt owed to Defendant by Plaintiff.

19. On August 10, 2009, Defendant placed collection calls to the Plaintiff on three separate occasions.

20. On August 10, 2009, the first collection call that Defendant made to Plaintiff was at 7:35 AM, local time at Plaintiff's location.

21. Plaintiff did give prior consent to Defendant to contact her directly prior to 8:00 AM, local time at Plaintiff's location.

## **V. CAUSES OF ACTION**

### **COUNT I: DEFENDANT VIOLATED THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT**

22. Plaintiff incorporates by reference and re-alleges the allegations set forth above as if fully stated herein.

23. Defendant regularly collects and attempts to collect debts owed to itself.

24. Defendant violated *15 U.S.C. §1692c(a)(2)* of the FDCPA by communicating with the Plaintiff in connection with the collection of a debt after Defendant had knowledge that the Plaintiff was represented by an attorney with respect to such debt and had knowledge of, or could readily ascertain, such attorney's name and address.

25. Defendant violated *15 U.S.C. §1692c(c)* of the FDCPA by communicating with the Plaintiff in connection with the collection of a debt after the Plaintiff, by and through her attorney, notified the Defendant in writing that the Plaintiff wished that the Defendant cease further communication with the Plaintiff.

26. Defendant violated *15 U.S.C. §1692c(a)(1)* of the FDCPA by communicating with the Plaintiff at a time which should be known to be inconvenient for the Plaintiff, which was on August 10, 2009 at 7:35 AM, local time at Plaintiff's location.

27. Defendant violated *15 U.S.C. §1692d(5)* of the FDCPA by causing Plaintiff's telephone to ring and engaging in telephone conversation with Plaintiff repeatedly and continuously with the intent to annoy, abuse and harass the Plaintiff.



28. Defendant violated *15 U.S.C. §1692d(5)* by engaging in conduct of which the natural result is the abuse and harassment of the Plaintiff.

**COUNT II: PENDENT JURISDICTION: DEFENDANT'S VIOLATION OF THE  
WISCONSIN CONSUMER ACT**

29. Plaintiff incorporates by reference and re-alleges the allegations set forth above as if fully stated herein.

30. Defendant regularly collects and attempts to engage in a course of action, conduct or practice in collection of debts owed to itself.

31. Defendant has, in the course of attempting to collect a debt from Plaintiff arising from a consumer credit transaction, communicated with Plaintiff with such frequency or at such unusual hours as can reasonably be expected to threaten or harass the Plaintiff, in violation of *Wis. Stats. §427.104(1)(g)*.

32. Defendant has, in the course of attempting to collect a debt from Plaintiff arising from a consumer credit transaction, engaged in other conduct which can be reasonably expected to threaten or harass the Plaintiff, in violation of *Wis. Stats. § 427.104(1)(h)*.

33. As a direct and proximate result of the violations committed by the Defendant, Plaintiff has suffered, and continues to suffer, damages including, but not limited to, emotional distress, embarrassment, mental anguish, emotional distress, pecuniary loss and incurring of attorney's fees.

34. As a further direct and proximate result of said violations, Plaintiff is entitled to an award of their reasonable costs and attorney's fees.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, LEONA HART, by and through her attorney, respectfully requests that request that the court find that Defendant, CAPITAL ONE, has violated has violated Federal Fair Debt Collection Practices Act and the Wisconsin Consumer Act, and respectfully requests judgment be entered against Defendant for the following:

- a. All actual compensatory damages suffered;
- b. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. §1692k*;
- c. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. §1692k*; and
- d. Any other relief deemed appropriate by this Honorable Court.

Dated this 3 day of August, 2010

Respectfully submitted,  
**LEONA HART**

By:   
Joshua B. Kons  
Attorney for Plaintiff

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